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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,976	04/12/2002	Egidio Renna	3-293 USA	5792

466 7590 09/28/2005

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,976

Applicant(s)

RENNA, EGIDIO

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29, 30, and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the disclosure of the application of Landau, S.N. 08/797,593 (abandoned, but open to the public on 4/4/2000), and applicant's admission of the prior art in the form of the Jeppson claim language, in view of Harvey et al ('737), Cecere ('899), Coleman ('527), Luzenberg ('012), Norhren ('416), and Chambers ('925).

It is first noted that Landau is prior art since it is referenced in U. S. Patent No. 6,045,833. See in this regard, MPEP Sections 901.02 and 2127. A copy of S. N. 08/797,593 is attached for applicant's convenience.

In regard to claim 29, Landau discloses a "plug" (i.e. a cap) for sucking a beverage comprising coupling means for coupling the plug to a vessel holding a beverage to be drunk, housing means capable of housing a dissolvable solid food product and supporting means for supporting the product in the housing. Landau also discloses that the plug has a base portion, a middle portion, and a top portion wherein the bottom portion includes the coupling means (e.g. screw threads), the top portion (e.g. 26, 56, and 84) has a central opening bordered by a rim to allow the beverage to exit the plug, and a solid product associated with the plug. Claim 29 differs from Landau in the orientation of the solid product. Landau discloses positioning the solid product either on the top portion as either a coating, or wherein the entire top portion is made of

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the solid material, or wherein the solid material is positioned inside the housing/middle portion. Thus, claim 1 differs from Landau in the recitation that the elements are oriented relative to each other, including the product extending beyond the rim such that the consumer's lips can be placed on the top portion and liquid drawn past at the same time the solid is exposed to the tongue. Since Landau teaches contact of the users lips with a rim that is dissolvable or not, and also teaches a dissolvable material in the cap which the beverage flows over, and since Harvey teaches a dissolvable material placed on the end of an attachment so that it is exposed to the tongue while the lips are around the mouth piece, to modify Landau and add a dissolvable solid to the housing so that it is exposed to the tongue as by attachment to 16, or just an extension of 16 which itself could be dissolvable, would therefore have been obvious in view of the art taken as a whole. Cecere, Coleman, Luzenberg, Norhren and Chambers are relied on as further evidence of cap-type devices containing dissolvable solids to be combined with a beverage. In regard to the dependent claims 30,34,35 and 36, the particular shape of the elements would have been an obvious matter of choice and/or design. Both curved mouthpieces and dissolvable solids are, of course, conventional.

Claims 31, 32 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 29 above, and further in view of Gallart et al ('407) who is relied on for the reasons given in the Office action mailed 12/16/04.

Claims 29-37 are rejected under 35USC112, 2nd para. as being indefinite. Claim 29 appears to lack antecedent basis in the phrase "said bottom portion" (line 7) and the phrase "said holding means" (line 11). If applicant chooses to file a response to this

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Office action, it is suggested that Applicant review all of the claims for such indefiniteness. It is also not clear whether the phrase "a said solid product" refers back to "a dissolvable solid food product".

All of applicant's remarks filed 5/16/05 have been fully and carefully reviewed but are seen to be moot in view of the new ground of rejection, necessitated by the amendment.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761